

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Monday, September 9, 2002

**The Kiva
City Hall
Scottsdale, Arizona**

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CALL TO ORDER (IN CITY HALL KIVA FORUM)

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Monday, September 9, 2002 in the Kiva, City Hall, at 5:07 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor David Ortega
Council Members Ned O'Hearn, Tom Silverman, Robert Littlefield, Wayne Ecton, and Cynthia Lukas

Also Present: City Manager Jan Dolan
City Attorney David Pennartz
City Clerk Sonia Robertson

Pledge of Allegiance

Girl Scout Troops 653 and 368 led the audience in the pledge of allegiance.

Invocation

Pastor Ray Barton of Scottsdale Bible Church offered the invocation.

Announcement

Mayor Manross sent the City's condolences to Joel Kenneth Moore's family. He had worked as Facilities Manager at WestWorld and passed away from a heart attack last week.

Mayor Manross announced that this year's Vista Del Camino Annual Back to School Program served a record 536 youth. The children received two clothing outfits, shoes, backpacks, and school supplies while 132 haircuts were provided. She thanked everyone who contributed to the program.

Information Update

Update on development of Los Arcos as requested by Councilwoman Lukas

City Manager Jan Dolan explained that prior to Council taking their annual summer break, the Council provided staff and the city's financial consultant with parameters to follow in discussions with the Ellman Companies on the potential development of the Los Arcos site. There were several discussions and meetings throughout the summer although there is no firm proposal on the table.

Councilwoman Lukas explained that she requested the update in response to requests for information from citizens.

Vice Mayor Ortega pointed out that an appraisal was done by the City on the Ellman property whereas the property was appraised at between \$12.2 and \$23 million dollars. He also noted that the last proposal was based on 36 acres of the 42 acres available.

Boards and Commissions

Airport Advisory Commission (2)

Vice Mayor Ortega briefly noted the purpose of the commission as well as qualifications for members of the Airport Advisory Commission and then opened the floor for nominations.

Councilman O'Hearn nominated Thomas Guilfooy
Mayor Manross nominated William Mack
Councilman Littlefield nominated Fred Madanick
Councilman Littlefield nominated Michael Reagan
Councilwoman Lukas nominated Jack Stein
Councilman Ecton nominated Philip Vickers

Vice Mayor Ortega closed the floor for nominations.

William Mack was reappointed and **Philip Vickers** was appointed to the Airport Advisory Commission by a majority vote.

Building Advisory Board of Appeals (1)

Due to a lack of applicants, Council agreed to postpone this appointment to allow for submittal of additional applications.

Development Review Board (1)

Vice Mayor Ortega briefly noted the purpose of the board as well as the qualifications for members of the Development Review Board and then opened the floor for nominations.

Mayor Manross nominated Jeremy Jones
Councilman Silverman nominated Michael Schmitt

Vice Mayor Ortega closed the floor for nominations.

Michael Schmitt was appointed to the Development Review Board by majority vote.

Parks and Recreation Commission (1)

Vice Mayor Ortega briefly noted the purpose of the commission as well as the qualifications for members of the Parks and Recreation Commission and then opened the floor for nominations.

Councilwoman Lukas nominated Carol Irvin
Councilman Silverman nominated Marc Miller
Councilman Littlefield nominated Nona Oliver

Vice Mayor Ortega closed the floor for nominations.

Nona Oliver was appointed to the Parks and Recreation Commission by a majority vote.

Planning Commission (1)

Vice Mayor Ortega briefly noted the purpose of the commission as well as the qualifications for members the Planning Commission and then opened the floor for nominations.

Councilman Ecton nominated Steven Steinberg
Councilwoman Lukas nominated Andrea Forman

Vice Mayor Ortega closed the floor for nominations.

Steven Steinberg was appointed to the Planning Commission by a majority vote.

Tourism Development Commission (1)

Vice Mayor Ortega briefly noted the purpose of the commission as well as the qualifications for the Tourism Development Commission and then opened the floor for nominations.

Councilman Silverman nominated John Pye

Vice Mayor Ortega closed the floor for nominations.

John Pye was appointed to the Tourism Development Commission by unanimous vote.

Transportation Commission (1)

Vice Mayor Ortega briefly noted the purpose of the commission as well as the qualifications for the Transportation Commission and then opened the floor for nominations.

Mayor Manross nominated David Bentler
Councilman Ecton nominated Brian Davis

Vice Mayor Ortega closed the floor for nominations.

Brian Davis was appointed to the Transportation Commission by a majority vote.

Public Comment

Michael S. Levy, 3846 N. Pueblo Way, expressed his opposition to the petition which was submitted to the City to close a portion of Main Street from 68th to 69th Street as part of Valley Ho's renovation plan. He stated his belief that the plan does not need to include closure of the street as the closure would negatively impact the residential neighborhood in the area and prevent direct access to Old Town Scottsdale.

Minutes

REGULAR MEETINGS

Monday, August 26, 2002

Tuesday, August 27, 2002

EXECUTIVE SESSIONS

July 2, 2002

August 27, 2002

Councilwoman Lukas moved to approve the Regular Meeting Minutes for Monday, August 26, 2002 and Tuesday, August 27, 2002 and the Executive Session Minutes for July 2, 2002 and August 27, 2002. Councilman Ecton seconded the motion which carried 7/0.

REGULAR AGENDA

1. Sushi N Rock Karaoke Liquor License Request

Request: To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) state liquor license.

Location: 15111 N Hayden Rd

Reference: City Case # 69-LL-2002

Staff Contact(s): Jeff Fisher, Interim Plan Review & Permit Services Director

480-312-7619, jefisher@ci.scottsdale.az.us

2. The Unlikely Cowboy Liquor License Request

Request: To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 3 (domestic microbrewery) state liquor license.

Location: Market Street @ DC Ranch - 20751 N Pima Road, Suite 100

Reference: City Case # 70-LL-2002

Staff Contact(s): Jeff Fisher, Interim Plan Review & Permit Services Director

480-312-7619, jefisher@ci.scottsdale.az.us

3. Everett's Steakhouse Liquor License Request

Request: To consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) state liquor license.

Location: 20701 N Scottsdale Road, Suite C1 and C2

Reference: City Case # 71-LL-2002

Staff Contact(s): Jeff Fisher, Interim Plan Review & Permit Services Director

480-312-7619, jefisher@ci.scottsdale.az.us

4. REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 7

5. Construction bid award for modifications to Pump Station No. 102 and New Reservoir at Site No. 102

Request: AUTHORIZE Construction Award No. 02PB026 to construct pump station modifications, a new 2.5 million gallon reservoir and modifications to an existing reservoir to MGC Contractors, Inc., the lowest responsive bidder, at their total lump sum bid of \$2,073,219.00.

Location: All work is located at Site No. 102, at the southwest corner of Pima Road and Ashler Hills Drive.

Staff Contact(s): Chuck Henne, Project Manager, (480) 312-7097, chenne@ci.scottsdale.az.us

6. REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 8

7. Grant award for crime laboratory computer hardware and software

Request: Adopt resolution No. 6142 authorizing the Police Department to accept the *Arizona Criminal Justice Commission Full-Service Forensic Crime Laboratory Grant Program* in the amount of \$80,000 for the purchase of City standard computers, servers, computer hardware and commercial software to develop a computer-based laboratory information management system.

Reference: Resolution No. 6142

Staff Contact(s): Steve Garrett, Forensic Services Division Manager, Police Department
480-312-5280, sgarrett@ci.scottsdale.az.us

8. REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 8

9. Prosecution and Courts – contracts for diversion programs

Request: Resolve to authorize the Mayor to execute contracts with two vendors for diversion services related to reported cases of domestic violence, underage drinking, shoplifting, theft, assault and disorderly conduct, as an alternative to formal prosecution of those incidents, if appropriate under all attending facts and circumstances.

Related Policies, References: Resolution No. 6135, Contract Nos. 2002-115-COS, 2002-116-COS,

2002-117-COS and 2002-118-COS

Caron L. Close, City Prosecutor, (480) 312-3161; CCLOSE@ci.scottsdale.az.us

10. Adult Probation Department

Request: Adopt Resolution No. 6141 authorizing the City to enter into Intergovernmental Agreement No. 2002-122-COS with the Maricopa County Superior Court on behalf of the Maricopa County Adult Probation Department to provide for the City's participation in the Community Work Service Program. Documents related to this action include Resolution #4054, Intergovernmental Agreement #940047, Resolution #4759, and Intergovernmental Agreement #970053 and reference past agreements with Maricopa County allowing the utilization of the Adult Probation Community Service Program in Scottsdale.

Staff Contact(s): Debra Baird, Parks, Recreation and Facilities Director, (480) 312-2480, dbaird@ci.scottsdale.az.us, <mailto:dbaird@ci.scottsdale.az.us>, John Stumbo, Facilities Management Coordinator, (480) 312-5552, jstumbo@ci.scottsdale.az.us, <mailto:jstumbo@ci.scottsdale.az.us>, and Robert Cohen, Citizen and Neighborhood Resources Code Enforcement Manager, (480)312-4088, rcohen@ci.scottsdale.az.us, <mailto:rcohen@ci.scottsdale.az.us>.

11. REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 9

12. REMOVED FROM CONSENT AGENDA FOR SEPARATE DISCUSSION. SEE PAGE 10

13. Enter into a contract for legal counsel in the Arizona General Stream Adjudication

Request: Resolve to authorize the Mayor to enter into Intergovernmental Agreement No. 2002-128-COS, between the cities of Scottsdale, Glendale, Mesa and Chandler to provide for joint funding for outside legal counsel in the Arizona General Stream Adjudication, and corresponding Agreement No. 2002-129-COS which sets forth payment and insurance provisions which are unique to Scottsdale's preferred form of consultant agreement.

Related Policies, References: The City is a party to the Arizona General Stream Adjudication, a massive lawsuit to apportion rights to the surface waters of Arizona

Staff Contact(s): Janis Villalpando, (480) 312-2472; JVillalpando@ci.scottsdale.az.us

14. Lease agreement for Police Special Investigations Section Building

Request: Adopt Resolution No. 6155 authorizing the City Manager to execute a lease agreement for a Police Department undercover office. Authorize \$48,810 budget transfer from Operating Contingency (100-99501-52890) to the Police Department (280-02302-52890). Racketeering Influenced Corrupt Organization (RICO) dollars of \$84,810, will fund the additional space requirements.

Staff Contact(s): Lt. Sean Duggan, Special Investigations Section Commander, (480) 312-8219; sduggan@ci.scottsdale.az.us

COUNCILWOMAN LUKAS MOVED TO APPROVE CONSENT ITEMS 1, 2, 3, 5, 7, 9, 10, 13, AND 14. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION

4. Land acquisition for the McDowell Sonoran Preserve

Request: Adopt Resolution No. 6144 authorizing purchase in the amount of \$195,250 for the 5.006-acre Parcel No. 216-59-004H

Location: 30440 N. 130th Street, for the McDowell Sonoran Preserve.

Related Policies, References: The parcel is within the expanded Recommended Study Boundary approved in August 1998 by City Council and in November 1998 by voters. The acquisition of this land supports City Council Broad Goal B: Preserve the Character and Environment of Scottsdale, and two sub-goals under Goal B: Complete the acquisition of lands within the adopted Preserve boundaries; and Protect natural resources, open spaces and views. The McDowell Sonoran Preserve Commission strongly supports the preservation of all land within the voter Recommended Study Boundary.

*The McDowell Sonoran Preserve is supported by five public votes. Tax collections through July 2002 - **\$94.3 million**. Preserve acquisition expenditures - **\$243.3 million**. Bonds issued - **\$232 million** (\$134.6 million in General Obligation bonds). Remaining private land to consider for acquisition- **224 acres**. Existing Preserve tax sufficient to pay for acquisition of this parcel.*

Staff Contact(s): Robert J. Cafarella, AICP, Director, Preservation Division, 480-312-2577; rcafarella@ci.scottsdale.az.us

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, questioned the amount of money budgeted and spent for acquisition of land for the preserve. He questioned the city's debt service and if the City intends to increase property taxes.

Mayor Manross closed public testimony.

Mayor Manross assured citizens that the city is purchasing the land for the preserve very responsibly and doesn't purchase land if money isn't available.

COUNCILWOMAN LUKAS MOVED TO ADOPT RESOLUTION NO. 6144 AUTHORIZING PURCHASE IN THE AMOUNT OF \$195,250 FOR THE 5.006-ACRE PARCEL NO. 216-59-004H

LOCATED AT 30440 N. 130TH STREET FOR THE MCDOWELL SONORAN PRESERVE. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.

6. Construction award for public amenities at WestWorld Trailhead

Request: AUTHORIZE Bid Award No. 02PB122 for the WestWorld Trailhead Project, to Valley Rain Construction Corporation, the lowest responsive bidder at their lump sum bid of \$783,145.00, which includes the base bid and bid alternates 1 and 2.

Related Policies, References: Development Review Board (Case #116-DR-93 #2, 3 & 4) May, 1994 related to WestWorld entry signage, re-vegetation, and Western Theme Park DRB (Case #116-DR-1993#5) April 18, 2002- trailhead improvements.

Staff Contact(s): Brad Gessner, WestWorld General Manager, (480) 312-6825, bgessner@ci.scottsdale.az.us; Annette Grove, CPM Sr. Project Manager, (480) 312-2399, agrove@ci.scottsdale.az.us

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, expressed concern that the City is spending a large amount of money in the northern part of the City while the southern area turns into a slum. He questioned how much money has been spent on the facility and how much taxpayer subsidy has contributed to the facility. He felt the money should be allocated from the McDowell Mountain Preserve money since it would allow for another access into the preserve. He suggested that the City sell Planet Ranch and use the money at WestWorld.

Mayor Manross closed public testimony.

VICE MAYOR ORTEGA MOVED TO AUTHORIZE BID AWARD NO. 02PB122 FOR THE WESTWORLD TRAILHEAD PROJECT, TO VALLEY RAIN CONSTRUCTION CORPORATION, THE LOWEST RESPONSIVE BIDDER AT THEIR LUMP SUM BID OF \$783,145.00, WHICH INCLUDES THE BASE BID AND BID ALTERNATES 1 AND 2. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

8. Authorize defense and indemnification of the City Clerk and City Attorney in fire initiatives lawsuit

Request: Adopt Resolution No. 6145 authorizing the City to pay for the defense and indemnification of the City Clerk and City Attorney in the lawsuit filed as *Committee to Protect Scottsdale and our Firefighters, and Richard Woerth v. Sonia Robertson, City Clerk, David Pennartz, City Attorney, City of Scottsdale, and Helen Purcell, County Recorder*, Maricopa County Superior Court No. CV2002-015957.

Related Policies, References: Resolution 6145; Scottsdale Revised Code, Sec. 2-179.

Deborah Robberson, Deputy City Attorney, 480-312-2405, dobberson@ci.scottsdale.az.us

Michael Mason, Risk Management Claims Manager, 480-312-2490, mmason@ci.scottsdale.az.us

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, explained that he doesn't recall an instance where the City indemnified employees in advance of a lawsuit. He stated his belief that by indemnifying city employees before a

judgment, the City sends the wrong message to the future jury. He also questioned the cost of this action to the City.

Mayor Manross closed public testimony.

Mayor Manross explained that City Code allows City Council to indemnify charter officers if they acted in good faith. She stated her belief that the City should investigate the possibility of creating an ordinance to indemnify its charter officers in all cases since they act in good faith in the performance of their duties.

In response to questions from Councilman Littlefield, Attorney Pennartz explained that the lawsuit does not allege that the statutes were not properly executed. It alleges that the statutes themselves are invalid. The suit includes an allegation of monetary damages against the City of Scottsdale and its charter officers in the event that the courts determine that the statutes are invalid.

COUNCILMAN ECTON MOVED TO ADOPT RESOLUTION NO. 6145 AUTHORIZING THE CITY TO PAY FOR THE DEFENSE AND INDEMNIFICATION OF THE CITY CLERK AND CITY ATTORNEY IN THE LAWSUIT FILED AS *COMMITTEE TO PROTECT SCOTTSDALE AND OUR FIREFIGHTERS, AND RICHARD WOERTH V. SONIA ROBERTSON, CITY CLERK, DAVID PENNARTZ, CITY ATTORNEY, CITY OF SCOTTSDALE, AND HELEN PURCELL, COUNTY RECORDER*, MARICOPA COUNTY SUPERIOR COURT NO. CV2002-015957. COUNCILMAN SILVERMAN SECONDED THE MOTION WHICH CARRIED 7/0.

11. Contract for Legal Services in connection with *City of Scottsdale v. Skyridge Estates, L.L.C., et al.* Superior Court Case N. CV99-13646.

Request: Authorize Contract No. 2000-083A-COS in a maximum amount of thirty thousand dollars (\$30,000.00) with GRAHAM & ASSOCIATES for legal services in connection with *City of Scottsdale v. Skyridge Estates, L.L.C., et al.* Superior Case N. CV99-13646 brought to acquire real property necessary for the McDowell Sonoran Preserve. The contract will enable the City to continue receiving expert legal services with respect to this matter.

Related Policies, References: Resolution No. 6148.

Staff Contact: Patrick McGreal, Assistant City Attorney, pmcgreal@ci.scottsdale.az.us
(480) 312-2405

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, questioned the costs associated with both items 11 and 12. He questioned why the costs aren't funded by the McDowell Mountain Preserve Fund.

Mayor Manross closed public testimony.

COUNCILMAN LUKAS MOVED TO **ADOPT** RESOLUTION NO. 6148 AND **AUTHORIZE** CONTRACT NO. 2000-083A-COS IN A MAXIMUM AMOUNT OF THIRTY THOUSAND DOLLARS (\$30,000.00) WITH GRAHAM & ASSOCIATES FOR LEGAL SERVICES IN CONNECTION WITH *CITY OF SCOTTSDALE V. SKYRIDGE ESTATES, L.L.C., ET AL.* SUPERIOR CASE N. CV99-13646 BROUGHT TO ACQUIRE REAL PROPERTY NECESSARY FOR THE MCDOWELL SONORAN PRESERVE. VICE MAYOR ORTEGA SECONDED THE MOTION WHICH CARRIED 6/0 (W.E. – ABSENT FOR VOTE).

12. Contract for Legal Services in connection with City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348

Request: Adopt Resolution No. 6149 authorizing the Mayor to execute Contract No. 2001-038A-COS, an outside counsel contract renewal in a maximum amount of Two Hundred Thousand Dollars (\$200,000.00) with the law firm of GRAHAM & ASSOCIATES, LTD for legal services regarding representation of the City of Scottsdale in the litigation entitled City of Scottsdale v. Glenalden Homes, L.L.C., et al., Superior Court Case No. CV 99-13348, an eminent domain action brought to acquire real property for McDowell Sonoran Preserve.

Related Policies, References: Resolution No. 6149

Staff Contact(s): Patrick McGreal, Assistant City Attorney, pmcgreal@ci.scottsdale.az.us (480) 312-2405

COUNCILWOMAN LUKAS MOVED TO ADOPT RESOLUTION NO. 6149 AUTHORIZING THE MAYOR TO EXECUTE CONTRACT NO. 2001-038A-COS, AN OUTSIDE COUNSEL CONTRACT RENEWAL IN A MAXIMUM AMOUNT OF TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) WITH THE LAW FIRM OF GRAHAM & ASSOCIATES, LTD FOR LEGAL SERVICES REGARDING REPRESENTATION OF THE CITY OF SCOTTSDALE IN THE LITIGATION ENTITLED CITY OF SCOTTSDALE V. GLENALDEN HOMES, L.L.C., ET AL., SUPERIOR COURT CASE NO. CV 99-13348, AN EMINENT DOMAIN ACTION BROUGHT TO ACQUIRE REAL PROPERTY FOR MCDOWELL SONORAN PRESERVE. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

REGULAR AGENDA

15. Collaborative City and School Planning Text Amendment

Request: To Approve a text amendment to the Zoning Ordinance of the City of Scottsdale adding Article I., Administration And Procedures, Section 1.1500, Collaborative City And School Planning, **and**

1. Adopt Ordinance No. 3464 affirming the above text amendment.

Location: City-wide

Reference: 4-TA-2002

Staff Contact: Don Hadder, Principal Planner, 480-312-2352, dhadder@ci.scottsdale.az.us

Kroy Ekblaw introduced the item with a brief slide presentation as summarized below.

Collaborative City & School Planning Ordinance - 4-TA-02

Background

- Discussions by Scottsdale City Council and Scottsdale School Board
- State law limits the role of cities in supporting school districts
- Review and dialogue noted that the City of Glendale ordinance has been effective in reviewing school facility needs per rezoning requests

Current Conditions

- Five school districts
 - Scottsdale, Paradise Valley, Cave Creek, Balsz, and Fountain Hills
- Unincorporated, 12 sq. mi. in Pinnacle Peak area

- School districts are notified after rezoning requests are submitted

Purpose of the Ordinance

- Advance notice to school districts
 - to be aware of rezoning applications that would increase the number of homes
- Opportunity for dialogue between school districts and applicants
 - to discuss school facility limitations and needs
- Consistent communication between the city and school districts

Ordinance Key Provisions

- Applicants will notify school districts before they submit rezoning requests to the city
- Districts will use consistent methods to analyze adequate facilities and needs
- The results of their analysis will be included in rezoning reports and files

Analysis by the Districts

- Determination of the adequacy of school facilities falls into one of five categories:
 - There are adequate facilities
 - There will be adequate facilities within one year
 - A charter school will be able to provide facilities on behalf of the district
 - The applicant has agreed to help achieve adequate facilities
 - There are not adequate facilities

Community Benefits

- Awareness of the impacts of new homes on local school facilities
- Consistency in the consideration of school facility needs
- Opportunity for early discussion and resolution regarding school facility needs

Community Involvement

- Citizens have accessed the city's website, sent e-mail and attended public open houses
- Input has included general questions, support for the proposal and a desire for more city involvement and coordination in school planning

Recommendations

- All five School districts are in support
- Planning Commission Recommends Approval – (6-0)

Other Means of City Support

- Coordination with the city's General Plan and school districts master plans
- Provide information on development activity and demographics
- Applicants notify districts of all pending preliminary plat submittals to the city

Policies and Procedures Guidelines

- Responsibilities of the applicant, school districts, and city
- Standard forms and formats
- Contact lists
- Detailed procedures
- Consistent with public involvement process

In response to questions from Councilwoman Lukas, Mr. Ekblaw explained that the school district would notify the City if adequate facilities aren't available. The city anticipates that in the cycle of communication (applicant working with the school district and the city) that the information would be available. Disclosure would be required to be communicated to the city from the school district with a copy provided to the applicant. This information would be included in any case moving forward through the city's processes.

In response to additional questions from Councilwoman Lukas, Attorney Pennartz explained that he did not think that the state requires information concerning adequate school facilities to be included in the real estate report; however, staff would follow-up on the issue.

Councilman O'Hearn expressed concern over inconsistencies in the verbiage contained in the proposed ordinance as well as the section that stated that staff would assume that adequate facilities exist if the school district doesn't forward a report to the City. Attorney Pennartz explained that the primary focus of the ordinance would be to provide the school district with adequate information in a timely manner regarding the proposed development. He further clarified that the City cannot mandate the school district to report its findings to the City within a certain period of time.

Mr. Ekblaw confirmed for Councilman O'Hearn that singularly one item would not be cause for denial of a rezoning case. Attorney Pennartz explained that if there are issues connected with a rezoning case regarding adequate school facilities, it is very likely that there would be other concerns as well.

Mr. Ekblaw explained that should Council approve this item tonight, staff would schedule meetings with the school districts to ensure a smooth transition. He explained that the City anticipates that all districts will be submitting information to the City when appropriate.

Councilman O'Hearn inquired if there is any way that the City could receive assurances that the school districts would provide information to the City in a specific period of time. In response to additional questions from Councilman O'Hearn, Attorney Pennartz explained that one of the responses that the school district may provide is that although they may not have adequate facilities, the district has determined that an existing or proposed charter school, established by contract with the district, could provide adequate facilities for the projected student load. He noted that the school district could consider but would not be required to explore this option.

Mr. Ekblaw confirmed for Councilman O'Hearn that the attorney's office, Don Hadder, and Planning and Development services have been working together to assure coordination of the information and submittals. He noted that the process the school districts would be following would be the same; however, since the structure of the districts are different, various personnel will be involved. Attorney Pennartz explained that it is important that the districts have formal notice of the application before it is final. There is an extension opportunity that is provided if the school district needs more time to submit its report.

Councilman O'Hearn expressed his opinion that it would be a dangerous assumption on the city's part to assume that there are adequate facilities if a school district doesn't provide information to the city. He pointed out that he would like to see this procedure changed. Attorney Pennartz explained that it is important to recognize that the school district will receive formal notice of the application before the application is filed with the city (since there is a 30-day advance requirement). The district can request an extension of time if they need more time to complete their calculations. Without an ordinance of this kind, there would be no legal basis on which the Council could utilize information regarding whether there are adequate school facilities in making a rezoning decision. He explained that the problem with setting up the ordinance so the City considers no response from a district as a negative response, and perhaps the application is denied, is that it gives veto power to a district simply by not responding.

Councilman O'Hearn suggested that the city revise the ordinance to indicate that in the instances where the school district doesn't provide information in the appropriate time to the city regarding the availability of adequate school facilities that the city would not assume that the facilities are available. Attorney Pennartz explained that this could be done with the understanding that the city could not take this issue into consideration when determining the particular rezoning application.

Attorney Pennartz confirmed for Councilman O'Hearn that the City Council or the Planning Commission could revisit this issue as part of the process whereas an explanation would be requested from the district as to why they didn't respond. He noted that this additional step would cause delays that the city would have to live with.

Vice Mayor Ortega pointed out that he and Councilwoman Lukas have worked for the past few years with the school district to try to address this issue. The purpose of the ordinance would be to give the district fair notice of a potential application. He noted that all rezoning must be noticed to the school districts as part of the process; however, this communication is currently one way without any information flowing back to the city. He pointed out that the issue is somewhat complicated by the fact that some parts of the city are not in a school district since they have declined to be annexed.

Vice Mayor Ortega questioned what would happen if a rezoning were to occur in an area where a school district does not occur. Mr. Ekblaw explained that adjourning districts would be noticed if the rezoning case was located in an unincorporated area. He clarified that the ordinance, as written, applies to any rezoning cases going from a non-residential to a residential zoning as well as any residential case where the density would increase.

In response to questions from Councilwoman Lukas, Attorney Pennartz explained that there are issues with timeliness regarding using information received after the requested timeframe. For example, it would cause some due process concerns if an applicant was ambushed with adverse information at a hearing. In general, the information could be considered if the language in the ordinance were revised.

Councilman Littlefield explained that the purpose of the ordinance is to provide information by asking the school districts to report to the City regarding the availability of adequate facilities. He felt it would prevent some of the developers from moving forward on their proposals if there aren't adequate facilities.

Councilman Littlefield shared Councilman O'Hearn's concern regarding the language in paragraph D. He felt that it should be eliminated from the ordinance since it was his belief that the city should not assume that there are adequate facilities if no response is received from the school district.

In response to concerns raised by Council, Attorney Pennartz suggested that the language in paragraph D should be revised as follows:

- D. IN THE EVENT THE CITY DOES NOT RECEIVE CERTIFICATION FROM THE SCHOOL DISTRICT WITHIN FIVE (5) DAYS OF THE DATE OF THE APPLICATION FOR REZONING, OR ANY EXTENSION THEREOF, THE APPLICATION SHALL PROCEED ON THE BASIS OF NO FINDING ON THE ADEQUACY OF SCHOOL FACILITIES FOR THE PROPOSED REZONING. SCHOOL DISTRICT INPUT THEREAFTER MAY BE SOUGHT BY THE CITY ON THE ISSUE FOR CONSIDERATION BY THE PLANNING COMMISSION AND CITY COUNCIL IN MAKING A DECISION ON THE REZONING APPLICATION.

COUNCILMAN LITTLEFIELD MOVED TO APPROVE A TEXT AMENDMENT TO THE ZONING ORDINANCE OF THE CITY OF SCOTTSDALE ADDING ARTICLE I., ADMINISTRATION AND PROCEDURES, SECTION 1.1500, COLLABORATIVE CITY AND SCHOOL PLANNING, WITH THE ABOVE REVISION TO PARAGRAPH D **AND** ADOPT ORDINANCE NO. 3464 AFFIRMING THE ABOVE TEXT AMENDMENT. CONCILMAN O'HEARN SECONDED THE MOTION WHICH CARRIED 7/0.

16. Pima/Ashler Hills Fire Station

Request: To approve a Municipal Use Master Site Plan on 9.8± acres with Single Family Residential, Environmentally Sensitive Lands (R1-130 ESL) zoning.

Location: 8798 E Ranch Road

Reference: 11-UP-2002

Staff Contact(s): Al Ward, Planner, 480-312-7067, award@ci.scottsdale.az.us

Randy Grant introduced this item with a slide presentation which is outlined below.

Case 11-UP-2002

Proposal:

- Amend Municipal Use Master Site Plan
 - * Add 9.8-ac.
 - * Approve Site Plan for new 5,000 sq. ft. Fire Station
- South of existing 4-acre site
Reservoir/Booster Station site
- 3.4-ac. Fire Station, 6.4-ac.
Parcel for Future Expansion
- Fire station building- "Santa Fe" style, low scale, compatible to area
- Low traffic generation-30 Veh/day.
- No smoke, odor, vibration - no sirens activated on site.
- 100' Scenic Corridor on Pima Rd.
- 50-75' NAOS buffer on west side
- Low level lighting

Municipal Use Master Site Plan Criteria:

- Not detrimental from noise, smoke, odor, dust or vibration
- No Unusual volume/character traffic
- Reasonably compatible to area

Community Impact:

- Enhanced emergency services/response time
- NAOS buffer to Single Family - Low scale, suitable style
- Facility compatible with area
- Low traffic, lighting and noise
- 1 Citizen concerned - sirens, lights, lower land value

Planning Commission Recommendation

Approval, with the additional stipulation that DRB consider massing and articulation building

Municipal Use Master Site Plan:

- Municipal Use over 1 acre
- In General Public Interest
- Compatible with area

Requires Planning Commission Review and City Council Approval

Staff Recommendation: APPROVE, subject to attached stipulations

Mr. Grant explained that there has been \$1.2 million that has been authorized for this capital improvement in the previous budget and carried over to the current budget.

In response to questions from Councilman Silverman, Mr. Grant explained that the property owner to the west who raised objections to the site, has not yet built on the property. There will be a minimum of 60' from the fire station building to the property line.

Councilman Ecton questioned if emergency medical vehicles would be housed at this location. Fire Chief Randall explained initially, the paramedics would be among the staff on the fire trucks. He noted, however, that consideration would be given in the future to housing a medical vehicle at the facility if the call volume warrants it.

In response to questions from Councilman Littlefield, Chief Randall explained that the policy whereas the sirens wouldn't be turned on until the trucks reached Pima Road is not unique to this station. It was pointed out due to the proposed site plan and location to the residential properties.

Chief Randall explained that the Transportation Department has looked at the traffic flow and the need for a flashing light on Pima Road. At this time, they are not recommending a light; however, will re-evaluate the situation once Pima Road is widened.

Vice Mayor Ortega noted that the garage doors of the proposed station do not face the residential property in the neighborhood. He stated his opinion that, as proposed, the appearance of the facility is as attractive as any home.

VICE MAYOR ORTEGA MOVED TO APPROVE A MUNICIPAL USE MASTER SITE PLAN ON 9.8± ACRES WITH SINGLE FAMILY RESIDENTIAL, ENVIRONMENTALLY SENSITIVE LANDS (R1-130 ESL) ZONING. CASE 11-UP-2002. COUNCILWOMAN LUKAS SECONDED THE MOTION WHICH CARRIED 6/0 (T.S. ABSENT FROM DAIS).

17. Removal of Downtown Redevelopment Area Designation

Request: To consider Resolution No. 6154 for the removal of the Downtown Redevelopment Area Designation. This item is being brought forward at the request of Council members.

Related Policies, References:

Staff Contact(s): Laurel Edgar, Revitalization Manager, 480-312-7313,

ledgar@ci.scottsdale.az.us;

David Roderique, Economic Vitality General Manager,

480-312-7601, droderique@ci.scottsdale.az.us

Dave Roderique presented a brief slide presentation to introduce item 17 which is summarized below.

Downtown Redevelopment Area Designation

- Consideration of Resolution No. 6154, repealing Resolution No. 4670, removing the Redevelopment Area designation from the Downtown Redevelopment Area.
 - Per Council Member request

Redevelopment Areas in the Central Business District

- Downtown Redevelopment Area
 - Designation approved December 2, 1996
 - 330 Acres
 - 906 Parcels
 - Waterfront Redevelopment Area
 - Designation approved February 16, 1993
 - 90 Acres
 - 219 Parcels
 - Southeast Downtown Redevelopment Area
 - Designation approved December 14, 1992
 - 160 Acres
- 167 Parcels

Downtown Redevelopment Area Analysis:

- Property Sales, 1996-2001
 - 35% of parcels sold at least one time
- Property Values, 1996-2001
 - Assessed Full Cash Values increased 75%
 - Maricopa County increased 73%
- Collected Sales Tax, 1996-2001
 - 9.9% increase, Downtown Sales Tax Sub-Areas
 - 28% increase for Maricopa County

Impacts of Removing Redevelopment Designation

- Government Property Lease Excise Tax abatement
- Eminent Domain for private development projects
- New Enhanced Municipal Services Districts
- EMSD No. 2 (would not be impacted by removal of Redevelopment designation)
- Loloma Development Agreement (this agreement wouldn't be impacted by removal of the Redevelopment designation)

Options

- A. Adopt Resolution 6154, Removing the Downtown Redevelopment Area designation
- B. Modify the Redevelopment Area boundaries
 - Give staff direction on amended boundaries
 - Direct staff to re-evaluate conditions for new boundaries
- C. Deny Resolution 6154, Leave Downtown Redevelopment Area designation as is – No action required.

Mayor Manross opened public testimony.

Mike Fernandez, (no address given), explained that he is a working partner at Pottery Paradise. He noted that the business has invested a substantial amount of money in renovations of the store and felt it was time Council “cut the noose” so the downtown area would thrive. He thanked various council

members and the Institute for Justice for their support. He urged Council to remove the redevelopment designation from downtown Scottsdale.

Lyle Wurtz, 6510 E. Palm Lane, expressed his opposition to the threat of condemnation in redevelopment areas. He stated his belief that condemnation in redevelopment areas is no different than various instances where government confiscated private land. He urged Council to take Scottsdale out of the redevelopment business.

Sam West, 8160 N. Hayden, J-210, briefly explained his involvement over the years with the downtown area. He expressed his opinion that private enterprise could do a better job of rebuilding the economy; thus, he urged Council to remove the redevelopment designation. He noted that one of the recommendations of the Downtown Task Force was to remove the designation from the downtown area. He urged Council to remove the redevelopment designation throughout the city.

Marilynn Atkinson, 3957 N. Brown Avenue, stated her support of removal of the redevelopment designation in the downtown area. She stated her belief that trust is gone and it cannot be rebuilt now. She stated that it is time to let the people enjoy their property and invest their money in what already exists.

Bob Vairo, 10040 E. Happy Valley Road, #451, spoke as a representative for the Coalition of Pinnacle Peak. He expressed the support of the coalition for the removal of the redevelopment area in the downtown. He felt it is time to remove an economic cloud that has become a major disincentive for owners to invest in their properties. He stated that condemnation alone justifies the removal of the redevelopment designation.

Lois Fitch, 1229 N. Granite Reef Road, recited the history of the redevelopment district and stressed the impact the designation has had on the property and business owners.

Councilman Silverman expressed his opinion that the downtown redevelopment district, which has been in existence for 6 years, has only created fear and anguish for property owners and merchants.

Vice Mayor Ortega submitted a memo dated September 9, 2000 for the record. The memo expressed his interest in clarification for re-evaluation of designated redevelopment areas as well as his desire to see this topic placed on Council's agenda.

Each Council member expressed their support of removing the redevelopment area and explained their individual reasons for their support. Several members stressed the importance of the fact that the Loloma Redevelopment Agreement would not be impacted by the removal of the designation.

COUNCILMAN SILVERMAN MOVED TO ADOPT RESOLUTION NO. 6154 FOR THE REMOVAL OF THE DOWNTOWN REDEVELOPMENT AREA DESIGNATION. COUNCILMAN ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

18. Agendize Downtown and Waterfront Redevelopment Citizens' Petition

Request: Consider agendizing any future possible actions on a Citizens' Petition, received on August 19, 2002, from property/business owners' petitioning to remove their property from existing redevelopment area designations.

Related Policies, References: The petition refers to the Scottsdale City Charter, Article II, Section 16, which requires petitions to be acted upon by the City Council in the regular course of business within 30 days.

Staff Contact(s): Laurel Edgar, Revitalization Manager, 480-312-7313,
ledgar@ci.scottsdale.az.us;

David Roderique, Economic Vitality General Manager, Laurel Edgar, Revitalization
Manager, 480-312-7601, droderique@ci.scottsdale.az.us

Dave Roderique presented a brief slide presentation to introduce the issue which has been summarized below.

Citizens' Petition RE: Redevelopment Designations and Eminent Domain Policies

- Consider agendaizing future possible actions on a Citizens' Petition from property/business owners and tenants petitioning to remove property from the existing Downtown and Waterfront redevelopment area designations and modifying City's policy on eminent domain.

Citizens' Petition

- 106 Signatures, Representing:
 - 87 individuals, 12 of whom signed with addresses outside of the redevelopment areas
 - 95 unique addresses
 - 65 unique parcels (61 Downtown, 4 Waterfront)
- Downtown Redevelopment Area statistics:
 - 50 Tenants and Employees
 - 14 Property Owners
 - 61 Parcels/906 Parcels (6.7%)
- Waterfront Redevelopment Area statistics:
 - 10 Tenants and Employees
 - 2 Property Owners
 - 4 Parcels/219 Parcels (1.8%)

Mr. Roderique pointed out that earlier today, the city received additional signed petitions that represented an additional 50 signatures. It appears that 6-7 other parcels within the waterfront district are presented from the signatures.

Citizens' Petition

- This petition requests the City Council to take the following actions:
 - Section 1: Remove all of the undersigned property owners and tenants from the Downtown and Waterfront Redevelopment Areas.
 - Section 2: Consider adopting an ordinance or resolution restricting the use of eminent domain, incorporating the following:
 - Repeal or sunset the redevelopment designations
 - Require all redevelopment projects consider including existing businesses
 - Require a finding by the City Council that a taking is 'essential' rather than 'necessary'
 - Require the City Council state in explicit language the exact public use for which the power of eminent domain is being exercised

Tonight's Options

- Agendize one or more items from the Citizens' Petition:
 - Remove properties from Waterfront Redevelopment Area
 - Restrict use of eminent domain via ordinance or resolution
- Do not agendize one or more items from the Citizens' Petition

Mayor Manross opened public testimony.

Lyle Wurtz, 6510 E. Palm Lane, expressed his support of agendizing consideration of this item. He stated his support of dissolving all redevelopment areas within the city.

Tom Liddy, 111 W. Monroe Street, spoke as the Executive Director and counsel for the Arizona chapter of the Institute for Justice. He thanked the Council for their action on item 17 earlier this evening. He urged Council to agendize item 18 with respect to the Waterfront Redevelopment area and to remove all the properties not involved with the City/Starwood agreement.

Bob Vairo, 10040 E. Happy Valley Road, #451, spoke as a representative for the Coalition of Pinnacle Peak. He stated the organization's support of agendizing this item for discussion.

Susan Wheeler, 9616 E. Kael, thanked Council for the action they took on item 17. She stated her belief that the property on the south side of the canal bank should also be removed from redevelopment.

Mayor Manross closed public testimony.

Mayor Manross expressed her belief that due to the Starwood Redevelopment Agreement, it would not be prudent for the city to remove the redevelopment designation in the Waterfront redevelopment area.

Vice Mayor Ortega explained that Starwood has completed the initial requirements of the agreement. He reminded everyone that the Council pledged publicly in June 2001 that there would be no condemnation involved among the petitioners. He didn't feel it would cause a problem to study the possibility of changing the boundaries of the redevelopment district; however, felt there should be caution exercised. Councilman O'Hearn stated that the Starwood project is the link between the north and south of the canal bank. He pointed out that there are fiscal issues involving the redevelopment designation. The Starwood agreement would allow the city to exercise their right to purchase the property from Starwood for \$13 million if Starwood fails to meet the milestones in the agreement. If the redevelopment area were

resolved, this opportunity would no longer exist. He didn't feel the city would be acting responsible if Council eliminated this opportunity should Starwood fail to meet the milestones in the tolling agreement.

Councilman O'Hearn asked if there is any way for Council to pass an ordinance that would eliminate the city's ability to use condemnation in the redevelopment area. Attorney Pennartz explained that it is state law that grants and/or withholds the power of condemnation. Local governments are not legally able to do anything that would either grant themselves the power of condemnation or remove the possibility of using it. He noted that Council is free to make policy decisions and to state the decisions in an ordinance or resolution. He pointed out that such policy decisions would be used as parameters in future negotiations since it is within Council's ability to designate that a redevelopment agreement will not include condemnation.

In response to questions from Mayor Manross, Attorney Pennartz clarified that the Council could stipulate in an ordinance that the city would not use the powers of eminent domain on the south side of the canal. He explained that he understood that the Starwood agreement should not be impacted since the negotiations are not dealing with any property on the south side of the canal.

Councilman Silverman pointed out that it is important to send a message to developers to stop the turmoil relating to the south side of the canal.

Councilman Ecton stated his belief that Council needs to consider this issue and various options. He suggested that some of the options could include isolating the Starwood property so it would remain in the designation, perhaps removing just the property owners who signed the petition. He noted that there may be other options which should also be considered.

Councilman Littlefield explained his belief that the redevelopment designation has had more of a negative impact on the south side of the canal than it has on the downtown area. He felt that removing this designation would, therefore, be even more important than removing the downtown designation. He stated his understanding that there is some risk; however, felt the city should do what is right. He felt the city should look at ways to remove the designation from the properties as requested without voiding the Starwood agreement.

Councilman Ecton clarified his intention to ask staff to come back with several options and explain the ramifications associated with each option.

Ms. Dolan clarified that she understands that Council is directing staff to come back with agendized items discussing the removal of properties from the Waterfront Redevelopment area and their potential impacts as well as the restriction of the use of eminent domain of properties within the Waterfront Redevelopment area by ordinance or resolution.

Councilman O'Hearn suggested engaging Starwood in the discussions to see if there is any way that the city can add an addendum to the redevelopment agreement so the city would be free to do what is necessary regarding the designation.

COUNCILMAN ECTON MOVED TO AGENDIZE THIS ITEM AND VARIOUS OPTIONS LEAVING IT SOMEWHAT OPEN TO COUNCIL TO MOVE AHEAD WITH PROPOSALS AND OPPORTUNITIES AS THEY ARE AVAILABLE. COUNCILMAN LITTLEFIELD SECONDED THE MOTION WHICH CARRIED 7/0.

Public Comment - None

City Manager's Report

Ms. Dolan reminded everyone that an electronic recycling event would be held on September 28th from 7:30 a.m. to 2:00 p.m. at 9191 E. San Salvador.

Ms. Dolan also reminded everyone that the city would be commemorating September 11th on the year anniversary of the tragedy from 7:30 and 8:30 a.m. in the Civic Center Mall.

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 8:25 P.M.

SUBMITTED BY:

Ann Eyerly, Council Recorder

REVIEWED BY:

Sonia Robertson, City Clerk

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 9th day of September 2002.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this _____ day of September 2002.

SONIA ROBERTSON
City Clerk